

115TH CONGRESS
1ST SESSION

S. 1024

To amend title 38, United States Code, to reform the rights and processes relating to appeals of decisions regarding claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 3, 2017

Mr. ISAKSON (for himself, Mr. BLUMENTHAL, Mr. TESTER, Mr. DAINES, Ms. HASSAN, Mr. UDALL, Mr. KING, Ms. BALDWIN, and Mr. KAINE) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to reform the rights and processes relating to appeals of decisions regarding claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans Appeals Im-
5 provement and Modernization Act of 2017”.

1 **SEC. 2. REFORM OF RIGHTS AND PROCESSES RELATING TO**
2 **APPEALS OF DECISIONS REGARDING CLAIMS**
3 **FOR BENEFITS UNDER LAWS ADMINISTERED**
4 **BY SECRETARY OF VETERANS AFFAIRS.**

5 (a) DEFINITIONS.—Section 101 of title 38, United
6 States Code, is amended by adding at the end the fol-
7 lowing new paragraphs:

8 “(34) The term ‘agency of original jurisdiction’
9 means the activity which entered the original deter-
10 mination with regard to a claim for benefits under
11 laws administered by the Secretary.

12 “(35) The term ‘relevant evidence’ means evi-
13 dence that tends to prove or disprove a matter in
14 issue.

15 “(36) The term ‘supplemental claim’ means a
16 claim for benefits under laws administered by the
17 Secretary filed by a claimant who had previously
18 filed a claim for the same or similar benefits on the
19 same or similar basis.”.

20 (b) NOTICE REGARDING CLAIMS.—Section 5103(a)
21 of such title is amended—

22 (1) in paragraph (1), in the first sentence, by
23 striking “The” and inserting “Except as provided in
24 paragraph (3), the”;

25 (2) in paragraph (2)(B)(i) by striking “, a
26 claim for reopening a prior decision on a claim, or

1 a claim for an increase in benefits;” and inserting
 2 “or a supplemental claim;”; and

3 (3) by adding at the end the following new
 4 paragraph:

5 “(3) The requirement to provide notice under para-
 6 graph (1) shall not apply with respect to a supplemental
 7 claim that is filed within the timeframe set forth in sub-
 8 paragraphs (B) and (D) of section 5110(a)(2) of this
 9 title.”.

10 (c) MODIFICATION OF RULE REGARDING DIS-
 11 ALLOWED CLAIMS.—Section 5103A(f) of such title is
 12 amended—

13 (1) by striking “reopen” and inserting “readju-
 14 dicate”; and

15 (2) by striking “material” and inserting “rel-
 16 evant”.

17 (d) MODIFICATION OF DUTY TO ASSIST CLAIM-
 18 ANTS.—Section 5103A of such title is amended—

19 (1) by redesignating subsections (e) through (g)
 20 as subsections (g) through (i), respectively; and

21 (2) by inserting after subsection (d) the fol-
 22 lowing new subsections:

23 “(e) APPLICABILITY OF DUTY TO ASSIST.—(1) The
 24 Secretary’s duty to assist under this section shall apply
 25 only to a claim, or supplemental claim, for a benefit under

1 a law administered by the Secretary until the time that
2 a claimant is provided notice of the agency of original ju-
3 risdiction's decision with respect to such claim, or supple-
4 mental claim, under section 5104 of this title.

5 “(2) The Secretary's duty to assist under this section
6 shall not apply to higher-level review by the agency of
7 original jurisdiction, pursuant to section 5104B of this
8 title, or to review on appeal by the Board of Veterans'
9 Appeals.

10 “(f) CORRECTION OF DUTY TO ASSIST ERRORS.—

11 (1) If, during review of the agency of original jurisdiction
12 decision under section 5104B of this title, the higher-level
13 adjudicator identifies or learns of an error on the part of
14 the agency of original jurisdiction to satisfy its duties
15 under this section, and that error occurred prior to the
16 agency of original jurisdiction decision being reviewed, un-
17 less the claim can be granted in full, the higher-level adju-
18 dicator shall return the claim for correction of such error
19 and readjudication.

20 “(2)(A) If the Board of Veterans' Appeals, during re-
21 view on appeal of an agency of original jurisdiction deci-
22 sion, identifies or learns of an error on the part of the
23 agency of original jurisdiction to satisfy its duties under
24 this section, and that error occurred prior to the agency
25 of original jurisdiction decision on appeal, unless the claim

1 can be granted in full, the Board shall remand the claim
2 to the agency of original jurisdiction for correction of such
3 error and readjudication.

4 “(B) Remand for correction of such error may in-
5 clude directing the agency of original jurisdiction to obtain
6 an advisory medical opinion under section 5109 of this
7 title.

8 “(3) Nothing in this subsection shall be construed to
9 imply that the Secretary, during the consideration of a
10 claim, does not have a duty to correct an error described
11 in paragraph (1) or (2) that was erroneously not identified
12 during higher-level review or during review on appeal with
13 respect to the claim.”.

14 (e) DECISIONS AND NOTICES OF DECISIONS.—Sub-
15 section (b) of section 5104 of such title is amended to read
16 as follows:

17 “(b) Each notice provided under subsection (a) shall
18 also include all of the following:

19 “(1) Identification of the issues adjudicated.

20 “(2) A summary of the evidence considered by
21 the Secretary.

22 “(3) A summary of the applicable laws and reg-
23 ulations.

24 “(4) Identification of findings favorable to the
25 claimant.

1 “(5) In the case of a denial, identification of
2 elements not satisfied leading to the denial.

3 “(6) An explanation of how to obtain or access
4 evidence used in making the decision.

5 “(7) If applicable, identification of the criteria
6 that must be satisfied to grant service connection or
7 the next higher level of compensation.”.

8 (f) BINDING NATURE OF FAVORABLE FINDINGS.—

9 (1) IN GENERAL.—Chapter 51 of such title is
10 amended by inserting after section 5104 the fol-
11 lowing new section:

12 **“§ 5104A. Binding nature of favorable findings**

13 “Any finding favorable to the claimant as described
14 in section 5104(b)(4) of this title shall be binding on all
15 subsequent adjudicators within the Department, unless
16 clear and convincing evidence is shown to the contrary to
17 rebut such favorable finding.”.

18 (2) CLERICAL AMENDMENT.—The table of sec-
19 tions at the beginning of chapter 51 of such title is
20 amended by inserting after the item relating to sec-
21 tion 5104 the following new item:

“5104A. Binding nature of favorable findings.”.

22 (g) HIGHER-LEVEL REVIEW BY AGENCY OF ORIGI-
23 NAL JURISDICTION.—

24 (1) IN GENERAL.—Chapter 51 of such title, as
25 amended by subsection (f), is further amended by in-

1 serting after section 5104A, as added by such sub-
2 section, the following new section:

3 **“§ 5104B. Higher-level review by the agency of origi-**
4 **nal jurisdiction**

5 “(a) IN GENERAL.—(1) A claimant may request a
6 review of the decision of the agency of original jurisdiction
7 by a higher-level adjudicator within the agency of original
8 jurisdiction.

9 “(2) The Secretary shall approve each request for re-
10 view under paragraph (1).

11 “(b) TIME AND MANNER OF REQUEST.—(1) A re-
12 quest for higher-level review by the agency of original ju-
13 risdiction shall be—

14 “(A) in writing in such form as the Secretary
15 may prescribe; and

16 “(B) made within one year of the notice of the
17 agency of original jurisdiction’s decision.

18 “(2) Such request may specifically indicate whether
19 such review is requested by a higher-level adjudicator at
20 the same office within the agency of original jurisdiction
21 or by an adjudicator at a different office of the agency
22 of original jurisdiction. The Secretary shall not deny such
23 request for review by an adjudicator at a different office
24 of the agency of original jurisdiction without good cause.

1 “(c) DECISION.—Notice of a higher-level review deci-
 2 sion under this section shall be provided in writing and
 3 shall include a general statement—

4 “(1) reflecting whether evidence was not consid-
 5 ered pursuant to subsection (d); and

6 “(2) noting the options available to the claim-
 7 ant to have the evidence described in paragraph (1),
 8 if any, considered by the Department.

9 “(d) EVIDENTIARY RECORD FOR REVIEW.—The evi-
 10 dentiary record before the higher-level adjudicator shall be
 11 limited to the evidence of record in the agency of original
 12 jurisdiction decision being reviewed.

13 “(e) DE NOVO REVIEW.—A review of the decision of
 14 the agency of original jurisdiction by a higher-level adjudi-
 15 cator within the agency of original jurisdiction shall be de
 16 novo.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-
 18 tions at the beginning of chapter 51 of such title, as
 19 amended by subsection (f), is further amended by in-
 20 serting after the item relating to section 5104A, as
 21 added by such subsection, the following new item:

“5104B. Higher-level review by the agency of original jurisdiction.”.

22 (h) OPTIONS FOLLOWING DECISION BY AGENCY OF
 23 ORIGINAL JURISDICTION.—

24 (1) IN GENERAL.—Chapter 51 of such title, as
 25 amended by subsection (g), is further amended by

1 inserting after section 5104B, as added by such sub-
2 section, the following new section:

3 **“§ 5104C. Options following decision by agency of**
4 **original jurisdiction**

5 “(a) WITHIN ONE YEAR OF DECISION.—(1) Subject
6 to paragraph (2), in any case in which the Secretary ren-
7 ders a decision on a claim, the claimant may take any of
8 the following actions on or before the date that is one year
9 after the date on which the agency of original jurisdiction
10 issues a decision with respect to that claim:

11 “(A) File a request for higher-level review
12 under section 5104B of this title.

13 “(B) File a supplemental claim under section
14 5108 of this title.

15 “(C) File a notice of disagreement under sec-
16 tion 7105 of this title.

17 “(2)(A) Once a claimant takes an action set forth in
18 paragraph (1), the claimant may not take another action
19 set forth in that paragraph with respect to such claim
20 until—

21 “(i) the higher-level review, supplemental claim,
22 or notice of disagreement is adjudicated; or

23 “(ii) the request for higher-level review, supple-
24 mental claim, or notice of disagreement is with-
25 drawn.

1 “(B) Nothing in this subsection shall prohibit a
2 claimant from taking any of the actions set forth in para-
3 graph (1) in succession with respect to a claim.

4 “(C) Nothing in this subsection shall prohibit a
5 claimant from taking different actions set forth in para-
6 graph (1) with respect to different claims.

7 “(D) The Secretary may, as the Secretary considers
8 appropriate, develop and implement a policy for claimants
9 who—

10 “(i) take an action under paragraph (1);

11 “(ii) wish to withdraw the action before the
12 higher-level review, supplemental claim, or notice of
13 disagreement is adjudicated; and

14 “(iii) in lieu of such action take a different ac-
15 tion under paragraph (1).

16 “(b) MORE THAN ONE YEAR AFTER DECISION.—In
17 any case in which the Secretary renders a decision on a
18 claim and more than one year has passed since the date
19 on which the agency of original jurisdiction issues a deci-
20 sion with respect to that claim, the claimant may file a
21 supplemental claim under section 5108 of this title.”.

22 (2) CLERICAL AMENDMENT.—The table of sec-
23 tions at the beginning of chapter 51 of such title, as
24 amended by subsection (g), is further amended by

1 inserting after the item relating to section 5104B, as
 2 added by such subsection, the following new item:

“5104C. Options following decision by agency of original jurisdiction.”.

3 (i) SUPPLEMENTAL CLAIMS.—

4 (1) IN GENERAL.—Section 5108 of such title is
 5 amended to read as follows:

6 **“§ 5108. Supplemental claims**

7 “If new and relevant evidence is presented or secured
 8 with respect to a supplemental claim, the Secretary shall
 9 readjudicate the claim taking into consideration any evi-
 10 dence added to the record prior to the former disposition
 11 of the claim.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-
 13 tions at the beginning of chapter 51 of such title is
 14 amended by striking the item relating to section
 15 5108 and inserting the following new item:

“5108. Supplemental claims.”.

16 (j) REMAND TO OBTAIN ADVISORY MEDICAL OPIN-
 17 ION.—Section 5109 of such title is amended by adding
 18 at the end the following new subsection:

19 “(d)(1) The Board of Veterans’ Appeals shall remand
 20 a claim to direct the agency of original jurisdiction to ob-
 21 tain an advisory medical opinion from an independent
 22 medical expert under this section if the Board finds that
 23 the Veterans Benefits Administration should have exer-
 24 cised its discretion to obtain such an opinion.

1 “(2) The Board’s remand instructions shall include
 2 the questions to be posed to the independent medical ex-
 3 pert providing the advisory medical opinion.”.

4 (k) RESTATEMENT OF REQUIREMENT FOR EXPE-
 5 DITED TREATMENT OF RETURNED AND REMANDED
 6 CLAIMS.—

7 (1) IN GENERAL.—Section 5109B of such title
 8 is amended to read as follows:

9 “§ 5109B. **Expedited treatment of returned and re-**
 10 **manded claims**

11 “The Secretary shall take such actions as may be
 12 necessary to provide for the expeditious treatment by the
 13 Veterans Benefits Administration of any claim that is re-
 14 turned by a higher-level adjudicator under section 5104B
 15 of this title or remanded by the Board of Veterans’ Ap-
 16 peals.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-
 18 tions at the beginning of chapter 51 of such title is
 19 amended by striking the item relating to section
 20 5109B and inserting the following new item:

“5109B. Expedited treatment of returned and remanded claims.”.

21 (l) EFFECTIVE DATES OF AWARDS.—Section 5110 of
 22 title 38, United States Code, is amended—

23 (1) by amending subsection (a) to read as fol-
 24 lows:

1 “(a)(1) Unless specifically provided otherwise in this
2 chapter, the effective date of an award based on an initial
3 claim, or a supplemental claim, of compensation, depend-
4 ency and indemnity compensation, or pension, shall be
5 fixed in accordance with the facts found, but shall not be
6 earlier than the date of receipt of application therefor.

7 “(2) For purposes of determining the effective date
8 of an award under this section, the date of application
9 shall be considered the date of the filing of the initial ap-
10 plication for a benefit if the claim is continuously pursued
11 by filing any of the following, either alone or in succession:

12 “(A) A request for higher-level review under
13 section 5104B of this title on or before the date that
14 is one year after the date on which the agency of
15 original jurisdiction issues a decision.

16 “(B) A supplemental claim under section 5108
17 of this title on or before the date that is one year
18 after the date on which the agency of original juris-
19 diction issues a decision.

20 “(C) A notice of disagreement on or before the
21 date that is one year after the date on which the
22 agency of original jurisdiction issues a decision.

23 “(D) A supplemental claim under section 5108
24 of this title on or before the date that is one year

1 after the date on which the Board of Veterans' Ap-
 2 peals issues a decision.

3 “(E) A supplemental claim under section 5108
 4 of this title on or before the date that is one year
 5 after the date on which the Court of Appeals for
 6 Veterans Claims issues a decision.

7 “(3) Except as otherwise provided in this section, for
 8 supplemental claims received more than one year after the
 9 date on which the agency of original jurisdiction issued
 10 a decision or the Board of Veterans' Appeals issued a deci-
 11 sion, the effective date shall be fixed in accordance with
 12 the facts found, but shall not be earlier than the date of
 13 receipt of the supplemental claim.”; and

14 (2) in subsection (i), in the first sentence—

15 (A) by striking “reopened” and inserting
 16 “readjudicated”;

17 (B) by striking “material” and inserting
 18 “relevant”; and

19 (C) by striking “reopening” and inserting
 20 “readjudication”.

21 (m) DEFINITION OF AWARD OR INCREASED AWARD
 22 FOR PURPOSES OF PROVISIONS RELATING TO COM-
 23 MENCEMENT OF PERIOD OF PAYMENT.—Section
 24 5111(d)(1) of such title is amended by striking “or re-

1 opened award” and inserting “award or award based on
2 a supplemental claim”.

3 (n) MODIFICATION ON LIMITATION ON FEES ALLOW-
4 ABLE FOR REPRESENTATION.—Section 5904(c) of such
5 title is amended, in paragraphs (1) and (2), by striking
6 “notice of disagreement is filed” both places it appears
7 and inserting “claimant is provided notice of the agency
8 of original jurisdiction’s initial decision under section 5104
9 of this title”.

10 (o) CLARIFICATION OF BOARD OF VETERANS’ AP-
11 PEALS REFERRAL REQUIREMENTS AFTER ORDER FOR
12 RECONSIDERATION OF DECISIONS.—Section 7103(b)(1)
13 of title 38, United States Code, is amended by striking
14 “heard” both places it appears and inserting “decided”.

15 (p) CONFORMING AMENDMENT RELATING TO RE-
16 ADJUDICATION.—Section 7104(b) of such title is amended
17 by striking “reopened” and inserting “readjudicated”.

18 (q) MODIFICATION OF PROCEDURES FOR APPEALS
19 TO BOARD OF VETERANS’ APPEALS.—

20 (1) IN GENERAL.—Section 7105 of title 38,
21 United States Code, is amended—

22 (A) in subsection (a), by striking the first
23 sentence and inserting “Appellate review shall
24 be initiated by the filing of a notice of disagree-
25 ment in the form prescribed by the Secretary.”;

1 (B) by amending subsection (b) to read as
2 follows:

3 “(b)(1)(A) Except in the case of simultaneously con-
4 tested claims, a notice of disagreement shall be filed within
5 one year from the date of the mailing of notice of the deci-
6 sion of the agency of original jurisdiction pursuant to sec-
7 tion 5104, 5104B, or 5108 of this title.

8 “(B) A notice of disagreement postmarked before the
9 expiration of the one-year period shall be accepted as time-
10 ly filed.

11 “(C) A question as to timeliness or adequacy of the
12 notice of disagreement shall be decided by the Board.

13 “(2)(A) Notices of disagreement shall be in writing,
14 shall identify the specific determination with which the
15 claimant disagrees, and may be filed by the claimant, the
16 claimant’s legal guardian, or such accredited representa-
17 tive, attorney, or authorized agent as may be selected by
18 the claimant or legal guardian.

19 “(B) Not more than one recognized organization, at-
20 torney, or agent may be recognized at any one time in
21 the prosecution of a claim.

22 “(C) Notices of disagreement shall be filed with the
23 Board.

24 “(3) The notice of disagreement shall indicate wheth-
25 er the claimant requests—

1 “(A) a hearing before the Board, which shall
2 include an opportunity to submit evidence in accord-
3 ance with section 7113(b) of this title;

4 “(B) an opportunity to submit additional evi-
5 dence without a hearing before the Board, which
6 shall include an opportunity to submit evidence in
7 accordance with section 7113(c) of this title; or

8 “(C) a review by the Board without a hearing
9 or the submittal of additional evidence.

10 “(4) The Secretary may develop a policy to permit
11 a claimant to modify the information identified in the no-
12 tice of disagreement after the notice of disagreement has
13 been filed under this section pursuant to such require-
14 ments as the Secretary may prescribe.”;

15 (C) by amending subsection (c) to read as
16 follows:

17 “(c) If no notice of disagreement is filed in accord-
18 ance with this chapter within the prescribed period, the
19 action or decision of the agency of original jurisdiction
20 shall become final and the claim shall not thereafter be
21 readjudicated or allowed, except as may otherwise be pro-
22 vided by section 5104B or 5108 of this title or such regu-
23 lations as are consistent with this title.”;

24 (D) by striking subsection (d) and insert-
25 ing the following new subsection (d):

1 “(d) The Board of Veterans’ Appeals may dismiss
 2 any appeal which fails to identify the specific determina-
 3 tion with which the claimant disagrees.”;

4 (E) by striking subsection (e); and

5 (F) in the section heading, by striking
 6 **“notice of disagreement and”**.

7 (2) CLERICAL AMENDMENT.—The table of sec-
 8 tions at the beginning of chapter 71 of such title is
 9 amended by striking the item relating to section
 10 7105 and inserting the following new item:

“7105. Filing of appeal.”.

11 (r) MODIFICATION OF PROCEDURES AND REQUIRE-
 12 MENTS FOR SIMULTANEOUSLY CONTESTED CLAIMS.—
 13 Subsection (b) of section 7105A of such title is amended
 14 to read as follows:

15 “(b)(1) The substance of the notice of disagreement
 16 shall be communicated to the other party or parties in in-
 17 terest and a period of thirty days shall be allowed for filing
 18 a brief or argument in response thereto.

19 “(2) Such notice shall be forwarded to the last known
 20 address of record of the parties concerned, and such action
 21 shall constitute sufficient evidence of notice.”.

22 (s) REPEAL OF PROCEDURES FOR ADMINISTRATIVE
 23 APPEALS.—

24 (1) IN GENERAL.—Chapter 71 of such title is
 25 amended by striking section 7106.

1 (2) CLERICAL AMENDMENT.—The table of sec-
 2 tions at the beginning of chapter 71 of such title is
 3 amended by striking the item relating to section
 4 7106.

5 (t) MODIFICATIONS RELATING TO APPEALS: DOCK-
 6 ETS; HEARINGS.—

7 (1) IN GENERAL.—Section 7107 of such title is
 8 amended to read as follows:

9 **“§ 7107. Appeals: dockets; hearings**

10 “(a) DOCKETS.—(1) Subject to paragraph (2), the
 11 Board shall maintain at least two separate dockets.

12 “(2) The Board may not maintain more than two
 13 separate dockets unless the Board notifies the Committee
 14 on Veterans’ Affairs of the Senate and the Committee on
 15 Veterans’ Affairs of the House of Representatives of any
 16 additional docket, including a justification for maintaining
 17 such additional docket.

18 “(3)(A) The Board may assign to each docket main-
 19 tained under paragraph (1) such cases as the Board con-
 20 siders appropriate, except that cases described in clause
 21 (i) of subparagraph (B) may not be assigned to any docket
 22 to which cases described in clause (ii) of such paragraph
 23 are assigned.

24 “(B) Cases described in this paragraph are the fol-
 25 lowing:

1 “(i) Cases in which no Board hearing is re-
 2 requested and no additional evidence will be sub-
 3 mitted.

4 “(ii) Cases in which a Board hearing is re-
 5 requested in the notice of disagreement.

6 “(4) Except as provided in subsection (b), each case
 7 before the Board will be decided in regular order according
 8 to its respective place on the docket to which it is assigned
 9 by the Board.

10 “(b) ADVANCEMENT ON THE DOCKET.—(1) A case
 11 on one of the dockets of the Board maintained under sub-
 12 section (a) may, for cause shown, be advanced on motion
 13 for earlier consideration and determination.

14 “(2) Any such motion shall set forth succinctly the
 15 grounds upon which the motion is based.

16 “(3) Such a motion may be granted only—

17 “(A) if the case involves interpretation of law of
 18 general application affecting other claims;

19 “(B) if the appellant is seriously ill or is under
 20 severe financial hardship; or

21 “(C) for other sufficient cause shown.

22 “(c) MANNER AND SCHEDULING OF HEARINGS FOR
 23 CASES ON A DOCKET THAT MAY INCLUDE A HEARING.—

24 “(1) For cases on a docket maintained by the Board under
 25 subsection (a) that may include a hearing, in which a

1 hearing is requested in the notice of disagreement, the
2 Board shall notify the appellant whether a Board hearing
3 will be held—

4 “(A) at its principal location; or

5 “(B) by picture and voice transmission at a fa-
6 cility of the Department where the Secretary has
7 provided suitable facilities and equipment to conduct
8 such hearings.

9 “(2)(A) Upon notification of a Board hearing at the
10 Board’s principal location as described in subparagraph
11 (A) of paragraph (1), the appellant may alternatively re-
12 quest a hearing as described in subparagraph (B) of such
13 paragraph. If so requested, the Board shall grant such re-
14 quest.

15 “(B) Upon notification of a Board hearing by picture
16 and voice transmission as described in subparagraph (B)
17 of paragraph (1), the appellant may alternatively request
18 a hearing as described in subparagraph (A) of such para-
19 graph. If so requested, the Board shall grant such request.

20 “(d) SCREENING OF CASES.—Nothing in this section
21 shall be construed to preclude the screening of cases for
22 purposes of—

23 “(1) determining the adequacy of the record for
24 decisional purposes; or

1 “(2) the development, or attempted develop-
2 ment, of a record found to be inadequate for
3 decisional purposes.

4 “(e) POLICY ON CHANGING DOCKETS.—The Sec-
5 retary may develop and implement a policy allowing a
6 claimant to move the claimant’s case from one docket to
7 another docket.”.

8 (2) REPORT.—Not later than the date that is
9 90 days before the date set forth in subsection (x),
10 the Secretary shall submit to the Committee on Vet-
11 erans’ Affairs of the Senate and the Committee on
12 Veterans’ Affairs of the House of Representatives a
13 report setting forth a description of the docket that
14 will be maintained under section 7107 of title 38,
15 United States Code, as amended by paragraph (1),
16 for cases in which no hearing before the Board of
17 Veterans’ Appeals is requested in the notice of dis-
18 agreement but the appellant requests, in the notice
19 of disagreement, an opportunity to submit additional
20 evidence.

21 (u) REPEAL OF CERTAIN AUTHORITY FOR INDE-
22 PENDENT MEDICAL OPINIONS.—

23 (1) IN GENERAL.—Section 7109 of such title is
24 repealed.

1 (2) CONFORMING AMENDMENT.—Section
2 5701(b)(1) of such title is amended by striking “or
3 7109”.

4 (3) CLERICAL AMENDMENT.—The table of sec-
5 tions at the beginning of chapter 71 of such title is
6 amended by striking the item relating to section
7 7109.

8 (v) CLARIFICATION OF PROCEDURES FOR REVIEW OF
9 DECISIONS ON GROUNDS OF CLEAR AND UNMISTAKABLE
10 ERROR.—Section 7111(e) of such title is amended by
11 striking “, without referral to any adjudicative or hearing
12 official acting on behalf of the Secretary”.

13 (w) EVIDENTIARY RECORD BEFORE BOARD OF VET-
14 ERANS’ APPEALS.—

15 (1) IN GENERAL.—Chapter 71 of such title is
16 amended by adding at the end the following new sec-
17 tion:

18 **“§ 7113. Evidentiary record before the Board of Vet-**
19 **erans’ Appeals**

20 “(a) CASES WITH NO REQUEST FOR A HEARING OR
21 ADDITIONAL EVIDENCE.—For cases in which a hearing
22 before the Board of Veterans’ Appeals is not requested
23 in the notice of disagreement and no request was made
24 to submit evidence, the evidentiary record before the
25 Board shall be limited to the evidence of record at the

1 time of the decision of the agency of original jurisdiction
2 on appeal.

3 “(b) CASES WITH A REQUEST FOR A HEARING.—(1)
4 Except as provided in paragraph (2), for cases in which
5 a hearing is requested in the notice of disagreement, the
6 evidentiary record before the Board shall be limited to the
7 evidence of record at the time of the decision of the agency
8 of original jurisdiction on appeal.

9 “(2) The evidentiary record before the Board for
10 cases described in paragraph (1) shall include each of the
11 following, which the Board shall consider in the first in-
12 stance:

13 “(A) Evidence submitted by the appellant and
14 his or her representative, if any, at the Board hear-
15 ing.

16 “(B) Evidence submitted by the appellant and
17 his or her representative, if any, within 90 days fol-
18 lowing the Board hearing.

19 “(c) CASES WITH NO REQUEST FOR A HEARING AND
20 WITH A REQUEST FOR ADDITIONAL EVIDENCE.—(1) Ex-
21 cept as provided in paragraph (2), for cases in which a
22 hearing is not requested in the notice of disagreement but
23 an opportunity to submit evidence is requested, the evi-
24 dentiary record before the Board shall be limited to the

1 evidence considered by the agency of original jurisdiction
 2 in the decision on appeal.

3 “(2) The evidentiary record before the Board for
 4 cases described in paragraph (1) shall include each of the
 5 following, which the Board shall consider in the first in-
 6 stance:

7 “(A) Evidence submitted by the appellant and
 8 his or her representative, if any, with the notice of
 9 disagreement.

10 “(B) Evidence submitted by the appellant and
 11 his or her representative, if any, within 90 days fol-
 12 lowing receipt of the notice of disagreement.”.

13 (2) NOTIFICATION WHEN EVIDENCE NOT CON-
 14 sidered.—Section 7104(d) of such title is amend-
 15 ed—

16 (A) in paragraph (1), by striking “; and”
 17 and inserting a semicolon;

18 (B) by redesignating paragraph (2) as
 19 paragraph (3); and

20 (C) by inserting after paragraph (1) the
 21 following new paragraph (2):

22 “(2) a general statement—

23 “(A) reflecting whether evidence was not
 24 considered in making the decision because the

1 evidence was received at a time when not per-
 2 mitted under section 7113 of this title; and

3 “(B) noting such options as may be avail-
 4 able for having the evidence considered by the
 5 Department; and”.

6 (3) CLERICAL AMENDMENT.—The table of sec-
 7 tions at the beginning of chapter 71 of such title is
 8 amended by inserting after the item relating to sec-
 9 tion 7112 the following new item:

“7113. Evidentiary record before the Board of Veterans’ Appeals.”.

10 (x) APPLICABILITY.—

11 (1) IN GENERAL.—Except as otherwise pro-
 12 vided in this subsection, the amendments made by
 13 this section shall apply to all claims for which notice
 14 of a decision under section 5104 of title 38, United
 15 States Code, is provided by the Secretary of Vet-
 16 erans Affairs on or after the later of—

17 (A) the date that is 540 days after the
 18 date of the enactment of this Act; and

19 (B) the date that is 30 days after the date
 20 on which the Secretary of Veterans Affairs sub-
 21 mits to the appropriate committees of Congress
 22 a certification that the Secretary confirms,
 23 without delegation, that the Department of Vet-
 24 erans Affairs has the resources, personnel, of-

1 fice space, procedures, and information tech-
2 nology required—

3 (i) to carry out the new appeals sys-
4 tem; and

5 (ii) to timely address both appeals of
6 decisions on legacy claims and appeals
7 under the new appeals system.

8 (2) COLLABORATION.—In determining whether
9 and when to make a certification under paragraph
10 (1)(B), the Secretary shall collaborate with, partner
11 with, and give weight to the advice of veterans serv-
12 ice organizations and such other stakeholders as the
13 Secretary considers appropriate.

14 (3) EARLY APPLICABILITY.—The Secretary
15 may apply the new appeals system to a claim with
16 respect to which the claimant—

17 (A) receives a notice of a decision under
18 section 5104 of such title after the date of the
19 enactment of this Act and before the applica-
20 bility date set forth in paragraph (1); and

21 (B) elects to subject the claim to the new
22 appeals system.

23 (4) PHASED ROLLOUT.—The Secretary may
24 begin implementation of the new appeals system in
25 phases, with the first phase of such phased imple-

1 mentation beginning on the applicability date set
2 forth in paragraph (1).

3 (5) TREATMENT OF LEGACY CLAIMS.—With re-
4 spect to legacy claims, upon the issuance to a claim-
5 ant of a statement of the case or supplemental state-
6 ment of the case occurring on or after the applica-
7 bility date specified in paragraph (1), a claimant
8 may elect to participate in the new appeals system.

9 (6) PUBLICATION OF APPLICABILITY DATE.—
10 Not later than the date on which the new appeals
11 system goes into effect (or the first phase of the new
12 appeals system goes into effect under paragraph (4),
13 as the case may be), the Secretary shall publish in
14 the Federal Register such date.

15 (7) DEFINITIONS.—In this subsection:

16 (A) APPROPRIATE COMMITTEES OF CON-
17 GRESS.—The term “appropriate committees of
18 Congress” means—

19 (i) the Committee on Veterans’ Af-
20 fairs and the Committee on Appropriations
21 of the Senate; and

22 (ii) the Committee on Veterans’ Af-
23 fairs and the Committee on Appropriations
24 of the House of Representatives.

1 (B) VETERANS SERVICE ORGANIZATION.—

2 The term “veterans service organization”
 3 means any organization recognized by the Sec-
 4 retary for the representation of veterans under
 5 section 5902 of title 38, United States Code.

6 (y) RULE OF CONSTRUCTION.—Nothing in this sec-
 7 tion or any of the amendments made by this section shall
 8 be construed to limit the ability of a claimant to request
 9 a revision of a decision under section 5109A or 7111 of
 10 title 38, United States Code.

11 **SEC. 3. COMPREHENSIVE PLAN FOR PROCESSING OF LEG-**
 12 **ACY APPEALS AND IMPLEMENTING NEW AP-**
 13 **PEALS SYSTEM.**

14 (a) PLAN REQUIRED.—Not later than 90 days after
 15 the date of the enactment of this Act, the Secretary of
 16 Veterans Affairs shall submit to the appropriate commit-
 17 tees of Congress and the Comptroller General of the
 18 United States a comprehensive plan for—

- 19 (1) the processing of appeals of decisions on
 20 legacy claims that the Secretary considers pending;
 21 (2) implementing the new appeals system;
 22 (3) timely processing, under the new appeals
 23 system, of—

1 (A) supplemental claims under section
2 5108 of title 38, United States Code, as amend-
3 ed by section 2(i);

4 (B) requests for higher-level review under
5 section 5104B of such title, as added by section
6 2(g); and

7 (C) appeals on any docket maintained
8 under section 7107 of such title, as amended by
9 section 2(t); and

10 (4) monitoring the implementation of the new
11 appeals system, including metrics and goals—

12 (A) to track the progress of the implemen-
13 tation;

14 (B) to evaluate the efficiency and effective-
15 ness of the implementation; and

16 (C) to identify potential issues relating to
17 the implementation.

18 (b) ELEMENTS.—The plan required by subsection (a)
19 shall include, at a minimum, the following:

20 (1) Delineation of the total resource require-
21 ments of the Veterans Benefits Administration and
22 the Board of Veterans' Appeals, disaggregated by
23 resources required to implement and administer the
24 new appeals system and resources required to ad-
25 dress the appeals of decisions on legacy claims.

1 (2) Delineation of the personnel requirements
2 of the Administration and the Board, including
3 staffing levels during the—

4 (A) period in which the Administration and
5 the Board are concurrently processing—

6 (i) appeals of decisions on legacy
7 claims; and

8 (ii) appeals of decisions on non-legacy
9 claims under the new appeals system; and

10 (B) the period during which the Adminis-
11 tration and the Board are no longer processing
12 any appeals of decisions on legacy claims.

13 (3) Identification of the legal authorities under
14 which the Administration or the Board may—

15 (A) hire additional employees to conduct
16 the concurrent processing described in para-
17 graph (2)(A); and

18 (B) remove employees who are no longer
19 required by the Administration or the Board
20 once the Administration and the Board are no
21 longer processing any appeals of decisions on
22 legacy claims.

23 (4) An estimate of the amount of time the Ad-
24 ministration and the Board will require to hire addi-
25 tional employees as described in paragraph (3)(A)

1 once funding has been made available for such pur-
2 pose, including a comparison of such estimate and
3 the historical average time required by the Adminis-
4 tration and the Board to hire additional employees.

5 (5) A description of the modifications to the in-
6 formation technology systems of the Administration
7 and the Board that the Administration and the
8 Board require to carry out the new appeals system,
9 including cost estimates and a timeline for making
10 the modifications.

11 (6) An estimate of the office space the Adminis-
12 tration and the Board will require during each of the
13 periods described in paragraph (2), including—

14 (A) an estimate of the amount of time the
15 Administration and the Board will require to
16 acquire any additional office space to carry out
17 processing of appeals of decisions on legacy
18 claims and processing of appeals under the new
19 appeals system;

20 (B) a comparison of the estimate under
21 subparagraph (A) and the historical average
22 time required by the Administration and the
23 Board to acquire new office space; and

24 (C) a plan for using telework to accommo-
25 date staff exceeding available office space, in-

1 including how the Administration and the Board
2 will provide training and oversight with respect
3 to such teleworking.

4 (7) Projections for the productivity of individual
5 employees at the Administration and the Board in
6 carrying out tasks relating to the processing of ap-
7 peals of decisions on legacy claims and appeals
8 under the new appeals system, taking into account
9 the experience level of new employees and the en-
10 hanced notice requirements under section 5104(b) of
11 title 38, United States Code, as amended by section
12 2(e).

13 (8) An outline of the outreach the Secretary ex-
14 pects to conduct to inform veterans, families of vet-
15 erans, survivors of veterans, veterans service organi-
16 zations, military service organizations, congressional
17 caseworkers, advocates for veterans, and such other
18 stakeholders as the Secretary considers appropriate
19 about the new appeals system, including—

20 (A) a description of the resources required
21 to conduct such outreach; and

22 (B) timelines for completing such outreach.

23 (9) Identification of and a timeline for—

24 (A) any training that may be required as
25 a result of hiring new employees to carry out

1 the new appeals system or to process appeals of
2 decisions on legacy claims; and

3 (B) any retraining of existing employees
4 that may be required to carry out such system
5 or to process such claims.

6 (10) Identification of the costs to the Depart-
7 ment of the training identified under paragraph (9)
8 and any additional training staff and any additional
9 training facilities that will be required to provide
10 such training.

11 (11) Timelines for updating any policy guid-
12 ance, Internet websites, and official forms that may
13 be necessary to carry out the new appeals system,
14 including—

15 (A) identification of which offices and enti-
16 ties will be involved in efforts relating to such
17 updating; and

18 (B) historical information about how long
19 similar update efforts have taken.

20 (12) A timeline, including interim milestones,
21 for promulgating such regulations as may be nec-
22 essary to carry out the new appeals system and a
23 comparison with historical averages for time re-
24 quired to promulgate regulations of similar com-
25 plexity and scope.

1 (13) An outline of the circumstances under
2 which claimants with pending appeals of decisions
3 on legacy claims would be authorized to have their
4 appeals reviewed under the new appeals system.

5 (14) A delineation of the key goals and mile-
6 stones for reducing the number of pending appeals
7 that are not processed under the new appeals sys-
8 tem, including the expected number of appeals, re-
9 mands, and hearing requests at the Administration
10 and the Board each year, beginning with the one
11 year period beginning on the date of the enactment
12 of this Act, until there are no longer any appeals
13 pending before the Administration or the Board for
14 a decision on a legacy claim.

15 (15) A description of each risk factor associated
16 with each element of the plan and a contingency
17 plan to minimize each such risk.

18 (c) REVIEW BY COMPTROLLER GENERAL OF THE
19 UNITED STATES.—

20 (1) IN GENERAL.—Not later than 90 days after
21 the Comptroller General of the United States re-
22 ceives the plan required by subsection (a), the
23 Comptroller General shall—

24 (A) assess such plan; and

1 (B) notify the appropriate committees of
2 Congress of the findings of the Comptroller
3 General with respect to the assessment con-
4 ducted under subparagraph (A).

5 (2) ELEMENTS.—The assessment conducted
6 under paragraph (1)(A) shall include the following:

7 (A) An assessment of whether the plan
8 comports with sound planning practices.

9 (B) Identification of any gaps in the plan.

10 (C) Formulation of such recommendations
11 as the Comptroller General considers appro-
12 priate.

13 (d) PERIODIC PROGRESS REPORTS.—Not later than
14 90 days after the date on which the Secretary submits
15 the plan under subsection (a), not less frequently than
16 once every 90 days thereafter until the applicability date
17 set forth in section 2(x)(1), and not less frequently than
18 once every 180 days thereafter for the 10-year period fol-
19 lowing such applicability date, the Secretary shall submit
20 to the appropriate committees of Congress and the Comp-
21 troller General a report on the progress of the Secretary
22 in carrying out the plan.

23 (e) APPROPRIATE COMMITTEES OF CONGRESS DE-
24 FINED.—In this section, the term “appropriate commit-
25 tees of Congress” means—

1 (1) the Committee on Veterans' Affairs and the
2 Committee on Appropriations of the Senate; and

3 (2) the Committee on Veterans' Affairs and the
4 Committee on Appropriations of the House of Rep-
5 resentatives.

6 **SEC. 4. PROGRAMS TO TEST ASSUMPTIONS RELIED ON IN**
7 **DEVELOPMENT OF COMPREHENSIVE PLAN**
8 **FOR PROCESSING OF LEGACY APPEALS AND**
9 **SUPPORTING NEW APPEALS SYSTEM.**

10 (a) AUTHORIZATION.—

11 (1) IN GENERAL.—The Secretary of Veterans
12 Affairs may carry out such programs as the Sec-
13 retary considers appropriate to test any assumptions
14 relied upon in developing the comprehensive plan re-
15 quired by section 3(a) and to test the feasibility and
16 advisability of any facet of the new appeals system.

17 (2) REPORTING REQUIRED.—Whenever the Sec-
18 retary determines, based on the conduct of a pro-
19 gram under paragraph (1), that legislative changes
20 to the new appeals system are necessary, the Sec-
21 retary shall submit to the Committee on Veterans'
22 Affairs of the Senate and the Committee on Vet-
23 erans' Affairs of the House of Representatives notice
24 of such determination.

1 (b) DEPARTMENT OF VETERANS AFFAIRS PROGRAM
2 ON FULLY DEVELOPED APPEALS.—

3 (1) IN GENERAL.—The Secretary of Veterans
4 Affairs may, under subsection (a)(1), carry out a
5 program to provide the option of an alternative ap-
6 peals process that shall more quickly determine such
7 appeals in accordance with this subsection.

8 (2) ELECTION.—

9 (A) FILING.—In accordance with subpara-
10 graph (B), a claimant may elect to file a fully
11 developed appeal under the program by filing
12 with the Secretary all of the following:

13 (i) The notice of disagreement under
14 chapter 71 of title 38, United States Code,
15 along with the written election of the
16 claimant to have the appeal determined
17 under the program.

18 (ii) All evidence that the claimant be-
19 lieves is needed for the appeal as of the
20 date of the filing.

21 (iii) A statement of the argument in
22 support of the claim, if any.

23 (B) TIMING.—A claimant shall make an
24 election under subparagraph (A) as part of the

1 notice of disagreement filed by the claimant in
 2 accordance with subparagraph (A)(i).

3 (C) TRIAGE.—The Secretary shall, upon
 4 expiration of the period specified in paragraph
 5 (3)(C)(iii), ensure that an assessment is under-
 6 taken of whether an appeal filed under subpara-
 7 graph (A) of this paragraph satisfies the re-
 8 quirements for appeal under the program and
 9 provide appropriate notification to the claimant
 10 of the results of that assessment.

11 (D) REVERSION.—

12 (i) ELECTED REVERSION.—At any
 13 time, a claimant who makes an election
 14 under subparagraph (A) may elect to re-
 15 vert to the standard appeals process. Such
 16 a reversion shall be final.

17 (ii) AUTOMATIC REVERSION.—A
 18 claimant described in clause (i), or a claim-
 19 ant who makes an election under subpara-
 20 graph (A) but is later determined to be in-
 21 eligible for the program under paragraph
 22 (1), shall revert to the standard appeals
 23 process without any penalty to the claim-
 24 ant other than the loss of the docket num-

1 ber associated with the fully developed ap-
2 peal.

3 (E) OUTREACH.—In providing claimants
4 with notices of the determination of a claim
5 during the period in which the program under
6 paragraph (1) is carried out, the Secretary shall
7 conduct outreach as follows:

8 (i) The Secretary shall provide to the
9 claimant (and to the representative of
10 record of the claimant, if any) information
11 regarding—

12 (I) the program, including the
13 advantages and disadvantages of the
14 program;

15 (II) how to make an election
16 under subparagraph (A);

17 (III) the limitation on the use of
18 new evidence described in subpara-
19 graph (C) of paragraph (3) and the
20 development of information under
21 subparagraph (D) of such paragraph;

22 (IV) the ability of the claimant to
23 seek advice and education regarding
24 such process from veterans service or-
25 ganizations, attorneys, and claims

1 agents recognized under chapter 59 of
2 title 38, United States Code; and

3 (V) the circumstances under
4 which the appeal will automatically re-
5 vert to the standard appeals process,
6 including by making a request for a
7 hearing.

8 (ii) The Secretary shall collaborate,
9 partner with, and give weight to the advice
10 of the three veterans service organizations
11 with the most members and such other
12 stakeholders as the Secretary considers ap-
13 propriate to publish on the Internet
14 website of the Department of Veterans Af-
15 fairs an online tutorial explaining the ad-
16 vantages and disadvantages of the pro-
17 gram.

18 (3) TREATMENT BY DEPARTMENT AND
19 BOARD.—

20 (A) PROCESS.—Upon the election of a
21 claimant to file a fully developed appeal pursu-
22 ant to paragraph (2)(A), the Secretary shall—

23 (i) not provide the claimant with a
24 statement of the case nor require the
25 claimant to file a substantive appeal; and

1 (ii) transfer jurisdiction over the fully
2 developed appeal directly to the Board of
3 Veterans' Appeals.

4 (B) DOCKET.—

5 (i) IN GENERAL.—The Board of Vet-
6 erans' Appeals shall—

7 (I) maintain fully developed ap-
8 peals on a separate docket than
9 standard appeals;

10 (II) decide fully developed ap-
11 peals in the order that the fully devel-
12 oped appeals are received on the fully
13 developed appeal docket;

14 (III) except as provided by clause
15 (ii), decide not more than one fully
16 developed appeal for each four stand-
17 ard appeals decided; and

18 (IV) to the extent practicable, de-
19 cide each fully developed appeal by
20 the date that is one year following the
21 date on which the claimant files the
22 notice of disagreement.

23 (ii) ADJUSTMENT.—Beginning one
24 year after the date on which the program
25 commences, the Board may adjust the

number of standard appeals decided for each fully developed appeal under clause (i)(III) if the Board determines that such adjustment is fair for both standard appeals and fully developed appeals.

(C) LIMITATION ON USE OF NEW EVIDENCE.—

(i) IN GENERAL.—Except as provided by clauses (ii) and (iii)—

(I) a claimant may not submit or identify to the Board of Veterans' Appeals any new evidence relating to a fully developed appeal after filing such appeal unless the claimant reverts to the standard appeals process pursuant to paragraph (2)(D); and

(II) if a claimant submits or identifies any such new evidence, such submission or identification shall be deemed to be an election to make such a reversion pursuant to paragraph (2)(D).

(ii) EVIDENCE GATHERED BY BOARD.—Clause (i) shall not apply to evidence developed pursuant to subpara-

1 graphs (D) and (E). The Board shall con-
2 sider such evidence in the first instance
3 without consideration by the Veterans Ben-
4 efits Administration.

5 (iii) REPRESENTATIVE OF RECORD.—

6 The representative of record of a claimant
7 for appeals purposes, if any, shall be pro-
8 vided an opportunity to review the fully de-
9 veloped appeal of the claimant and submit
10 any additional arguments or evidence that
11 the representative determines necessary
12 during a period specified by the Board for
13 purposes of this subparagraph.

14 (D) PROHIBITION ON REMAND FOR ADDI-
15 TIONAL DEVELOPMENT.—If the Board of Vet-
16 erans' Appeals determines that a fully devel-
17 oped appeal requires Federal records, inde-
18 pendent medical opinions, or new medical ex-
19 aminations, the Board shall—

20 (i) in accordance with subparagraph
21 (E), take such actions as may be necessary
22 to develop such records, opinions, or ex-
23 aminations in accordance with section
24 5103A of title 38, United States Code;

1 (ii) retain jurisdiction of the fully de-
2 veloped appeal without requiring a deter-
3 mination by the Veterans Benefits Admin-
4 istration based on such records, opinions,
5 or examinations;

6 (iii) ensure the claimant, and the rep-
7 resentative of record of a claimant, if any,
8 receives a copy of such records, opinions,
9 or examinations; and

10 (iv) provide the claimant a period of
11 90 days after the date of mailing such
12 records, opinions, or examinations during
13 which the claimant may provide the Board
14 any additional evidence without requiring
15 the claimant to make a reversion pursuant
16 to paragraph (2)(D).

17 (E) DEVELOPMENT UNIT.—

18 (i) ESTABLISHMENT.—The Board of
19 Veterans' Appeals shall establish an office
20 to develop Federal records, independent
21 medical opinions, and new medical exami-
22 nations pursuant to subparagraph (D)(i)
23 that the Board determines necessary to de-
24 cide a fully developed appeal.

1 (ii) REQUIREMENTS.—The Secretary
2 shall—

3 (I) ensure that the Veterans Ben-
4 efits Administration cooperates with
5 the Board of Veterans' Appeals in
6 carrying out clause (i); and

7 (II) transfer employees of the
8 Veterans Benefits Administration
9 who, prior to the enactment of this
10 Act, were responsible for processing
11 claims remanded by the Board of Vet-
12 erans' Appeals to positions within the
13 office of the Board established under
14 clause (i) in a number the Secretary
15 determines sufficient to carry out
16 such subparagraph.

17 (F) HEARINGS.—Notwithstanding section
18 7107 of title 38, United States Code, the Sec-
19 retary may not provide hearings with respect to
20 fully developed appeals under the program. If a
21 claimant requests to hold a hearing pursuant to
22 such section 7107, such request shall be deemed
23 to be an election to revert to the standard ap-
24 peals process pursuant to paragraph (2)(D).

25 (4) DURATION; APPLICABILITY.—

1 (A) DURATION.—Subject to subsection (c),
 2 the Secretary may carry out the program dur-
 3 ing such period as the Secretary considers ap-
 4 propriate.

5 (B) APPLICABILITY.—This section shall
 6 apply only to fully developed appeals that are
 7 filed during the period in which the program is
 8 carried out pursuant to subparagraph (A).

9 (5) DEFINITIONS.—In this subsection:

10 (A) COMPENSATION.—The term “com-
 11 pensation” has the meaning given that term in
 12 section 101 of title 38, United States Code.

13 (B) FULLY DEVELOPED APPEAL.—The
 14 term “fully developed appeal” means an appeal
 15 of a claim for disability compensation that is—

16 (i) filed by a claimant in accordance
 17 with paragraph (2)(A); and

18 (ii) considered in accordance with this
 19 subsection.

20 (C) STANDARD APPEAL.—The term
 21 “standard appeal” means an appeal of a claim
 22 for disability compensation that is not a fully
 23 developed appeal.

24 (c) TERMINATION OF AUTHORITY.—The Secretary of
 25 Veterans Affairs may not carry out a program under this

1 section after the applicability date set forth in section
 2 2(x)(1).

3 **SEC. 5. PERIODIC PUBLICATION OF METRICS RELATING TO**
 4 **PROCESSING OF APPEALS BY DEPARTMENT**
 5 **OF VETERANS AFFAIRS.**

6 The Secretary of Veterans Affairs shall periodically
 7 publish on an Internet website of the Department of Vet-
 8 erans Affairs the following:

9 (1) With respect to the processing by the Sec-
 10 retary of appeals under the new appeals system of
 11 decisions regarding claims for benefits under laws
 12 administered by the Secretary, the following:

13 (A) For the Veterans Benefits Administra-
 14 tion and, to the extent practicable, each re-
 15 gional office of the Department of Veterans Af-
 16 fairs, the number of—

17 (i) supplemental claims under section
 18 5108 of title 38, United States Code, as
 19 amended by section 2(i), that are pending;
 20 and

21 (ii) requests for higher-level review
 22 under section 5104B of such title, as
 23 added by section 2(g), that are pending.

1 (B) The number of appeals on any docket
2 maintained under section 7107 of such title, as
3 amended by section 2(t), that are pending.

4 (C) The average duration for processing
5 claims and supplemental claims, disaggregated
6 by regional office.

7 (D) The average duration for processing
8 requests for higher-level review under section
9 5104B of such title, as added by section 2(g),
10 disaggregated by regional office.

11 (E) The average number of days that ap-
12 peals are pending on a non-hearing option dock-
13 et of the Board of Veterans' Appeals main-
14 tained pursuant to section 7107 of such title, as
15 amended by section 2(t), and any other docket
16 maintained by the Board under such section
17 that prohibits the submittal of additional evi-
18 dence.

19 (F) The average number of days that ap-
20 peals are pending on dockets maintained under
21 such section in which hearings are requested or
22 submittal of additional evidence is allowed.

23 (G) The average number of days that an
24 appeal is pending on any other docket main-
25 tained by the Board under such section.

1 (H) In the case that the Secretary develops
2 and implements a policy under section 7107(e)
3 of such title, as amended by section 2(t)—

4 (i) the number of cases moved from
5 one docket to another pursuant to such
6 policy;

7 (ii) the average time cases were pend-
8 ing prior to moving from one docket to an-
9 other; and

10 (iii) the average time to adjudicate the
11 cases after so moving.

12 (I) The total number of remands to obtain
13 advisory medical opinions under section
14 5109(d) of title 38, United States Code, as
15 added by section 2(j).

16 (J) The average number of days between
17 the date on which the Board remands a claim
18 to obtain an advisory medical opinion under
19 section 5109(d) of such title, as so added, and
20 the date on which the advisory medical opinion
21 is obtained.

22 (K) The average number of days between
23 the date on which the Board remands a claim
24 to obtain an advisory medical opinion under
25 section 5109(d) of such title, as so added, and

1 the date on which the agency of original juris-
2 diction issues a decision taking that advisory
3 opinion into account.

4 (L) The number of appeals that are grant-
5 ed, the number of appeals that are remanded,
6 and the number of appeals that are denied by
7 the Board disaggregated by docket.

8 (M) The number of claimants each year
9 that take action within the period set forth in
10 section 5110(a)(2) of such title, as added by
11 section 2(l), to protect their effective date under
12 such section 5110(a)(2), disaggregated by the
13 status of the claimants taking the actions, such
14 as whether the claimant is represented by a vet-
15 erans service organization, the claimant is rep-
16 resented by an attorney, or the claimant is tak-
17 ing such action pro se.

18 (N) The total number of times on average
19 each claimant files under section 5110(a)(2) of
20 such title, as so added, to protect their effective
21 date under such section, disaggregated by the
22 subparagraph of such section under which they
23 file.

24 (O) The average duration, from the filing
25 of an initial claim until the claim is resolved

1 and claimants no longer take any action to pro-
2 tect their effective date under section
3 5110(a)(2) of such title, as so added—

4 (i) of claims under the new appeals
5 system, excluding legacy claims that opt in
6 to the new appeals system; and

7 (ii) of legacy claims that opt in to the
8 new appeals system.

9 (P) How frequently an action taken within
10 one year to protect an effective date under sec-
11 tion 5110(a)(2) of such title, as so added, leads
12 to additional grant of benefits, disaggregated by
13 action taken.

14 (Q) The average of how long it takes to
15 complete each segment of the claims process
16 while claimants are protecting the effective date
17 under such section, disaggregated by the time
18 waiting for the claimant to take an action and
19 the time waiting for the Secretary to take an
20 action.

21 (R) The number and the average amount
22 of retroactive awards of benefits from the Sec-
23 retary as a result of protected effective dates
24 under such section, disaggregated by action
25 taken.

1 (S) The average number of times claim-
2 ants submit to the Secretary different claims
3 with respect to same condition, such as an ini-
4 tial claim and a supplemental claim.

5 (T) The number of cases each year in
6 which a claimant inappropriately tried to take
7 simultaneous actions, such as filing a supple-
8 mental claim while a higher-level review is
9 pending, what actions the Secretary took in re-
10 sponse, and how long it took on average to take
11 those actions.

12 (U) In the case that the Secretary develops
13 and implements a policy under section
14 5104C(a)(2)(D) of such title, as amended by
15 section 2(h)(1), the number of actions with-
16 drawn and new actions taken pursuant to such
17 policy.

18 (V) The number of times the Secretary re-
19 ceived evidence relating to an appeal or higher-
20 level review at a time not authorized under the
21 new appeals system, disaggregated by actions
22 taken by the Secretary to deal with the evidence
23 and how long on average it took to take those
24 actions.

1 (W) The number of errors committed by
2 the Secretary in carrying out the Secretary's
3 duty to assist under section 5103A of title 38,
4 United States Code, that were identified by
5 higher-level review and by the Board,
6 disaggregated by type of error, such as errors
7 relating to private records and inadequate ex-
8 aminations, and a comparison with errors com-
9 mitted by the Secretary in carrying out such
10 duty with respect to appeals of decisions on leg-
11 acy claims.

12 (X) An assessment of the productivity of
13 employees at the regional offices and at the
14 Board, disaggregated by level of experience of
15 the employees.

16 (2) With respect to the processing by the Sec-
17 retary of appeals of decisions on legacy claims, the
18 following:

19 (A) The average duration of each segment
20 of the appeals process, disaggregated by periods
21 in which the Secretary is waiting for a claimant
22 to take an action and periods in which the
23 claimant is waiting for the Secretary to take an
24 action.

1 (B) The frequency by which appeals lead
2 to additional grant of benefits by the Secretary,
3 disaggregated by whether the additional bene-
4 fits are a result of additional evidence added
5 after the initial decision.

6 (C) The number and average amount of
7 retroactive awards of benefits resulting from an
8 appeal.

9 (D) The average duration from filing a leg-
10 acy claim with the Secretary until all appeals
11 and remands relating to such legacy claim are
12 completed.

13 (E) The average number of times claim-
14 ants submit to the Secretary different claims
15 with respect to same condition, such as an ini-
16 tial claim, new and material evidence, or a
17 claim for an increase in benefits.

18 (F) An assessment of the productivity of
19 employees at the regional offices and at the
20 Board, disaggregated by level of experience of
21 the employees.

22 (G) The average number of days the dura-
23 tion of an appeal is extended because the Sec-
24 retary secured or attempted to secure an advi-
25 sory medical opinion under section 5109 of title

1 38, United States Code, or section 7109 of such
2 title (as in effect on the day before the date of
3 the enactment of this Act).

4 (3) With respect to the processing by the Sec-
5 retary of appeals of decisions on legacy claims that
6 opt in to the new appeals system, the following:

7 (A) The cumulative number of such legacy
8 claims.

9 (B) The portion of work in the new ap-
10 peals system attributable to appeals of decisions
11 on such legacy claims.

12 (C) The average period such legacy claims
13 were pending before opting in to the new ap-
14 peals system and the average period required to
15 adjudicate such legacy claims on average after
16 opting in—

17 (i) with respect to claims at a regional
18 office of the Department of Veterans Af-
19 fairs, disaggregated by—

20 (I) supplemental claims under
21 section 5108 of title 38, United States
22 Code, as amended by section 2(i); and

23 (II) requests for higher-level re-
24 view under section 5104B of such
25 title, as added by section 2(g); and

1 (ii) with respect to appeals,
2 disaggregated by docket of the Board
3 maintained under section 7107 of such
4 title, as amended by section 2(t).

5 **SEC. 6. DEFINITIONS.**

6 In this Act:

7 (1) CLAIMANT.—The term “claimant” has the
8 meaning given such term in section 5100 of title 38,
9 United States Code.

10 (2) LEGACY CLAIMS.—The term “legacy claim”
11 means a claim—

12 (A) that was submitted to the Secretary of
13 Veterans Affairs for a benefit under a law ad-
14 ministered by the Secretary; and

15 (B) for which notice of a decision under
16 section 5104 of title 38, United States Code,
17 was provided by the Secretary before the date
18 set forth in section 2(x).

19 (3) OPT IN.—The term “opt in” means, with
20 respect to a legacy claim of a claimant, that the
21 claimant elects to subject the claim to the new ap-
22 peals system pursuant to—

23 (A) section 2(x)(3); or

1 (B) such other mechanism as the Secretary
2 may prescribe for purposes of carrying out this
3 Act and the amendments made by this Act.

4 (4) NEW APPEALS SYSTEM.—The term “new
5 appeals system” means the set of processes and
6 mechanisms by which the Secretary processes, pur-
7 suant to the authorities and requirements modified
8 by section 2, claims for benefits under laws adminis-
9 tered by the Secretary.

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